

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 20 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEDRO BETANCOURT PANIAGUA; et
al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-74909

Agency Nos. A095-294-329
A095-294-330

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Pedro Betancourt Paniagua and Ubalda Nunez Pacheco, natives and citizens
of Mexico, petition pro se for review of the Board of Immigration Appeals' denial

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

of their appeal, which the BIA construed as a motion to reopen, from an immigration judge order denying their request for relief. Initially, the immigration judge granted petitioners cancellation relief based on a finding of extreme hardship to their United States citizen child, but the BIA held that there was no extreme hardship to merit cancellation relief, vacated the IJ's order, and remanded for the IJ to determine whether petitioners were entitled to voluntary departure. On remand, the IJ denied voluntary departure, and petitioners filed an appeal brief with the BIA in which they challenged the BIA's previous denial of their cancellation application.

The evidence that petitioners presented with their motion to reopen concerned the same basic hardship grounds as their initial application for cancellation of removal. We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 601-03 (9th Cir. 2006).

PETITION FOR REVIEW DISMISSED.